Supreme Court, U.S.
FILED
MAR 3 1999
CLERK

No. 98-1149

In The

Supreme Court of the United States

October Term, 1998

ODILON CHACHA COTO, ET AL.,

Petitioners,

versus

J. RAY McDERMOTT, S.A., ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal For The Fourth Circuit Of The State Of Louisiana

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWARD J. KOEHL, JR., #7805
Counsel of Record
JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE, L.L.P.
201 St. Charles Avenue, 47th Floor
New Orleans, Louisiana 70170-5100
Telephone: (504) 582-8176
Counsel for Respondents:
McDermott International, Inc.
McDermott, Inc.
J. Ray McDermott, S.A.
J. Ray McDermott, Inc.
Offshore Petroleum Divers, Inc.
Insurance Company of North America

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

1. Whether the Fourth Circuit Court of Appeal for the State of Louisiana correctly decided that the 1982 amendments to the Jones Act, 46 App. U.S.C. § 688(b), preclude the Mexican National Petitioners from asserting their maritime tort claims under Louisiana and/or Mexican law in a Louisiana state court?

CERTIFICATE OF INTERESTED PARTIES

The Petitioners accurately list the parties to the proceeding.

In compliance with Rule 29.6, Respondents offer the following:

McDermott International, Inc. has no parent company. The following are non wholly-owned subsidiaries of McDermott International, Inc.; P.T. Babcock & Wilcox Indonesia; MacShelf Ltd.; J. Ray McDermott, S.A.

McDermott Inc.'s parent company is McDermott International, Inc. McDermott, Inc. does not have any non wholly-owned subsidiaries.

J. Ray McDermott, S.A.'s parent company is McDermott International, Inc. J. Ray McDermott, S.A. has the following non wholly-owned subsidiaries: McDermott Servicos de Construcao, Ltda.; P. T. Bataves Fabricators; Malmac Sdn.Bhd.; McDermott Abu Dhabi Offshore Construction; McDermott Arabia Company Limited; Initec, Astano y McDermott International, Inc., S.A.; Davy McDermott Limited.

J. Ray McDermott, Inc. (formerly OPI International, Inc.) has J. Ray McDermott Holdings, Inc. as its parent company. J. Ray McDermott, Inc. has the following non wholly-owned subsidiaries: WD 140 Platform LLC; TL Marine Sdn. Bhd.

Offshore Petroleum Divers, Inc.'s parent company is J. Ray McDermott, Inc. Offshore Petroleum Divers, Inc. does not have any wholly-owned subsidiaries and was dissolved on 21 August 1998.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

CERTIFICATE OF INTERESTED PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 2

I. NO CONFLICT WITH RELEVANT SUPREME COURT DECISIONS 5

II. THE JONES ACT – SECTION 688(b) 10

III. MARITIME PREEMPTION 24

IV. PETITIONERS' AUTHORITIES ARE INAPPOSITE 26

CONCLUSION 28

TABLE OF AUTHORITIES

Page

CASES

Ali v. The Offshore Co., 753 F.2d 1327 (5th Cir. 1985) 18

Alvarez v. Creole Petroleum Corp., 613 F.2d 1240 (3d Cir. 1980) 19

American Dredging Co. v. Miller, 510 U.S. 443 (1994) ..... *passim*

Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973) 24

Boggs v. Boggs, 520 U.S. 833 (1997) 29

Bolan v. Tidewater, Inc., 709 So.2d 1059 (La. Ct. App.), *writ denied*, 720 So.2d 1212 (La. 1998) 3

Bonnette v. Shell Offshore, Inc., 838 F. Supp. 1175 (S.D. Tex. 1993) 22

Camejo v. Ocean Drilling & Exploration Co., 838 F.2d 1374 (5th Cir. 1988) 26

Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918) 22

Chiazor v. Transworld Drilling Co., Ltd., 648 F.2d 1015 (5th Cir. 1981) 18, 19, 20

Coats v. Penrod Drilling Corp., 61 F.3d 1113 (5th Cir. 1995) 28

Cuevas v. Reading & Bates Corp., 577 F. Supp. 462 (S.D. Tex. 1983), *aff'd*, 770 F.2d 1371 (5th Cir. 1985) 27

Davis v. Matson Navigation Co., 143 F. Supp. 537 (N.D. Cal. 1956) 23

DeMateos v. Texaco, Inc., 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978) 18, 19

TABLE OF AUTHORITIES – Continued

Page

Dos Santos v. Reading & Bates Drilling Co., 495 F. Supp. 843 (E.D. La. 1980) 19

Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972) 22

First National Bank v. Walker Bank & Trust Co., 385 U.S. 252 (1966) 13

Gade v. National Solid Wastes Management Association, 505 U.S. 88 (1992) 29

Gillespie v. United States Steel Corp., 379 U.S. 148 (1964) 24

Green v. Industrial Helicopters, Inc., 593 So.2d 634 (La. 1992) 23, 25

Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970) 18

Hughes Aircraft Co. v. United States, 520 U.S. 939 (1997) 12

In re Amtrak Sunset Limited Train Crash, 121 F.3d 1421 (11th Cir. 1997), *cert. denied sub nom.*, ___ U.S. ___, 118 S.Ct. 1041 (1998) 9, 10

Jackson v. S.P. Leasing Corp., 774 S.W. 2d 673 (Tex. Ct. App. 1989) 21, 25

Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995) 22

Klinghoffer v. S.N.C. ACHILLE LAURO, 937 F.2d 44 (2d Cir. 1991) 27

Landgraf v. USI Film Prods., 511 U.S. 244 (1994) 12

Lauritzen v. Larsen, 345 U.S. 571 (1953) 18

Lawrenson v. Global Marine, Inc., 869 S.W. 2d 519 (Tex. Ct. App. 1993) 21, 25, 26

TABLE OF AUTHORITIES – Continued

Page

Lindh v. Murphy, 521 U.S. 320 (1997) 12

Marriott v. Sedco Forex International Resources, Ltd., 827 F. Supp. 59 (D. Mass. 1993).....26, 27

Miles v. Apex Marine Corp., 498 U.S. 19 (1990) 8, 9, 19, 24

Milstead v. Diamond M Offshore, Inc., 676 So.2d 89 (La. 1996) 11, 22

Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1972) 7

The Moses Taylor, 71 U.S. 411 (1866)..... 23

Neely v. Club Med Management Services, Inc., 63 F.3d 166 (3d Cir. 1995)..... 28

Nicol v. Gulf Fleet Supply Vessels, Inc., 743 F.2d 289 (5th Cir. 1984)..... 18

O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943) 22

Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986) 23, 24

Phillips v. Amoco Trinidad Oil Co., 682 F.2d 82 (9th Cir. 1980), *cert. denied sub nom.*, 451 U.S. 920 (1981) 19

Pittman v. Port Allen Marine Services, 794 F. Supp. 593 (M.D. La. 1992) 23

Robinson v. Shell Oil Co., 117 S. Ct. 843 (1997)..... 21

Romero v. International Terminal Operating Co., 358 U.S. 354 (1959) 18

TABLE OF AUTHORITIES – Continued

Page

Rousselle v. Plaquemines Parish School Board, 633 So.2d 1235 (La. 1994) 11

Schexnider v. McDermott International, Inc., 817 F.2d 1159 (5th Cir. 1987) 27

Segura v. Frank, 630 So.2d 714 (La. 1994) 11

Sosa v. M/V LAGO IZABAL, 736 F.2d 1028 (5th Cir. 1984) 18, 28

Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917) 5, 9, 10, 24

Vaz Borralho v. Keydril Company, 696 F.2d 379 (5th Cir. 1983) (*Vaz Borralho I*) 19

Vaz Borralho v. Keydril Company, 710 F.2d 207 (5th Cir. 1983) (*Vaz Borralho II*) 4, 7, 20

Wunderlich v. Netherlands Ins. Co., 125 F. Supp. 877 (S.D.N.Y. 1954) 23

Yamaha Motor Corp., U.S.A. v. Calhoun, 516 U.S. 199 (1996) 4, 7, 8, 9, 10, 29

STATUTES

28 U.S.C. § 1331(1) 11, 22

46 App. U.S.C. § 688 ..... *passim*

46 App. U.S.C. § 761 8

La. Civ. Code Ann. arts. 3542-3547 11

CONSTITUTIONAL PROVISIONS

United States Constitution art. VI, cl. 2 ..... 4, 11, 25

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

H.R. Rep. No. 863, 97th Cong. 2d Sess. 13, 14, 17

128 Cong. Rec. (1982) 15, 16, 17, 18, 20, 21

Thomas, J. Schoenbaum, ADMIRALTY & MARITIME LAW (1987) 22

David W. Robertson, *Admiralty And Maritime Litigation In State Court*, 55 La. L. Rev. 685 (1995) 12

STATEMENT OF THE CASE

Pursuant to Rule 15 of the Rules of the Supreme Court, Respondents offer the following to correct erroneous factual assertions and/or misstatements in Petitioners' Statement of the Case. Petitioners, non-resident aliens and citizens of Mexico, filed suit in the Civil District Court for the Parish of Orleans, State of Louisiana in the *Coto* matter on November 2, 1995. The suit was to recover damages for personal injuries allegedly sustained as a result of the sinking of a Mexican flag vessel, the Derrick Lay Barge 269 ("DLB-269"), on October 15, 1995 near the Yucatan Peninsula in the Bay of Campeche, off the coast of Mexico. No wrongful death or survival claims were asserted.

At the time of the sinking, the Petitioners were all residents and citizens of Mexico and non-resident aliens with respect to the United States. Defendants in the original Petition included CCC Fabricaciones Y Construcciones, S.A. de C.V. ("CCC"), the owner and operator of the DLB-269, and Corporacion de Industrias Y Construcciones, S.A. de C.V. ("CIC"), the employer of the Mexican National Petitioners. Both CCC and CIC are Mexican corporations based in Mexico.

Also named as defendants were McDermott International, Inc. and its subsidiary, J. Ray McDermott, S.A., both Panamanian corporations. Contrary to Petitioners' suggestion, these McDermott entities neither owned nor operated the DLB-269; nor did they employ the Mexican National Petitioners. *See* Petitioners' Brief at A. 3, n.2.

McDermott, Inc., a Delaware corporation, is a subsidiary of McDermott International, Inc. J. Ray McDermott,

Inc., a Delaware corporation and subsidiary of J. Ray McDermott, S.A., had a 49% ownership interest in CCC at the time of the casualty. Offshore Petroleum Divers, Inc., a Delaware corporation, is a subsidiary of J. Ray McDermott, Inc., who was insured by Insurance Company of North America. None of the McDermott entities, including Offshore Petroleum Divers, Inc., owned or operated the DLB-269. Nor did any of these entities employ the Mexican National Petitioners.

Just prior to the casualty which forms the basis of the suit, the DLB-269 was operated by CCC in the Bay of Campeche on the Continental Shelf of Mexico, under a contract with Petroleos Mexicanos, the state-owned oil company of Mexico. The DLB-269 had been engaged in the construction of an offshore pipeline connecting offshore platforms to facilitate the exploration and development of oil and gas resources on the Mexican Outer Continental Shelf. Petitioners were employees of CIC, a Mexican corporation, which had contracted with CCC in Mexico to provide crew members for the operation of the DLB-269.

REASONS FOR DENYING THE WRIT

McDermott International, Inc., McDermott, Inc., J. Ray McDermott, S.A., J. Ray McDermott, Inc., Offshore Petroleum Divers, Inc., and the Insurance Company of North America (hereinafter referred to as "Respondents") respectfully submit that Petitioners' Writ of Certiorari does not warrant review under the considerations of Rule X of the Rules of the Supreme Court. Respondents first

note that Petitioners do not contest that Section (b) of the Jones Act, 46 App. U.S.C. § 688(b), applies to the facts and circumstances of this case; nor do Petitioners seek review of the dismissal, with prejudice, of their claims under the Jones Act or general maritime law. The only issue for which review is sought is whether the trial court and the Louisiana Fourth Circuit Court of Appeal properly applied § 688(b) to the maritime tort claims of the Mexican National Petitioners in dismissing any Louisiana law claims with prejudice and dismissing their Mexican law claims without prejudice.

The decision of the trial court, as affirmed by the Louisiana appellate court, does not warrant review under Rule X. The Louisiana Supreme Court's denial of review of the appellate court's decision did not decide "an important federal question in a way that conflicts with the decision of another state court of last resort or of any United States court of appeals."[1] Further, the trial court's

---

[1] While this Court has not previously addressed whether § 688(b) precludes maintenance of a Louisiana law or foreign law claim in a Louisiana state court, this question does not represent a significant unresolved issue of law. The United States Congress resolved this issue in enacting § 688(b) as demonstrated by its legislative intent reviewed *infra*. Furthermore, a separate panel of the Louisiana Fourth Circuit Court of Appeal unanimously determined that § 688(b) precludes both state and foreign law claims in Louisiana courts by foreign offshore oil workers specifically covered by § 688(b). *Bolan v. Tidewater, Inc.*, 709 So.2d 1059 (La. Ct. App.), *writ denied*, 720 So.2d 1212 (La. 1998). Clearly, the decision of the Fourth Circuit Court of Appeal in this matter represents the appropriate and correct interpretation of 46 App. U.S.C. § 688(b). Accordingly, Petitioners' Writ of Certiorari should be denied.

decision, and the subsequent opinion by the Louisiana Fourth Circuit Court of Appeal, has not decided an important federal question in a way that conflicts with relevant decisions of this Court. The Jones Act legislation contained in § 688(b) establishes a uniform federal rule which is binding upon state courts through the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2. As noted by the Louisiana fourth circuit, "[r]egardless of how one characterizes § 688(b), in the end, Congress clearly circumscribed the right of redress for certain foreign seamen." Petitioners' Brief at A. 8-9.

Petitioners' basic premise that § 688(b) of the Jones Act is procedural and not substantive, thus not binding on a Louisiana state court, is in error. Petitioners conveniently overlook their admission that § 688(b) takes away from certain foreign offshore oil workers an action for damages for injury or death under the Jones Act and the general maritime law. Undoubtedly, such a statute is substantive and not, as Petitioners contend, merely a procedural *forum non conveniens* doctrine. *See, e.g., Vaz Borralho v. Keydril Co.*, 710 F.2d 207 (5th Cir. 1983).

Despite Petitioners' attempts to create a "conflict" between the Louisiana fourth circuit's decision and this Court's rulings in *American Dredging Co. v. Miller*, 510 U.S. 443 (1994), and *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), the relevant decisions in the maritime arena by this Court actually support the lower courts' rulings. Additionally, as a matter of statutory construction, the lower courts' rulings that 46 App. U.S.C. § 688(b) operates to preclude certain seamen from asserting claims in courts of the United States, whether federal or state, are correct.

Finally, as a matter of maritime preemption 46 App. U.S.C. § 688(b), as a Congressionally enacted mandate, does not allow state courts to provide remedies in derogation to Congress's intent. The Petitioners' argument and cited authority to the contrary are inapposite to the issues at hand.

I. No Conflict With Relevant Supreme Court Decisions

The decisions of the trial court and the fourth circuit are not in conflict with *American Dredging Co. v. Miller*, 510 U.S. 443 (1994), which did not involve the claim of a foreign offshore oil worker much less the application of § 688(b). Indeed, the principles recognized in *American Dredging* actually support the analysis of the trial court and the fourth circuit in interpreting § 688(b).

At bottom, *American Dredging* involved a conflict between "federal" procedural rules, i.e., *forum non conveniens*, and Louisiana's procedural rules regarding the absence of *forum non conveniens* in Louisiana state courts for maritime matters. This Court's ruling in *American Dredging* was predicated on the fact that the doctrine of *forum non conveniens* neither originated in admiralty nor had exclusive application in admiralty; therefore, Louisiana's refusal to apply *forum non conveniens* to maritime matters brought in state court did not work "material prejudice to [a] characteristic featur[e] of the general maritime law." *American Dredging*, 510 U.S. at 450 (quoting *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917)) (alteration in original). Unlike the doctrine of *forum non conveniens*, § 688(b) of the Jones Act undoubtedly originated in admiralty and has exclusive application in

"admiralty" cases. *American Dredging*, 510 U.S. at 455 ("Foremost among [Congress's] enactments in the field of maritime torts is the Jones Act.") (citation omitted). Thus, if a Louisiana state court were to refuse to apply § 688(b)'s strictures, that would work "material prejudice" to a characteristic feature of the general maritime law as expressed in the Jones Act.

Petitioners' reliance on *American Dredging* hinges on their likening of § 688(b) to a *forum non conveniens* doctrine. As more fully discussed in Section II *infra*, § 688(b) is a substantive statute that takes away a right of action from certain foreign offshore oil workers injured in territorial waters of other countries. As the court in *American Dredging* noted,

> [w]hile there is an established and continuing tradition of federal common law making in admiralty, that law is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field. Foremost among those enactments in the field of maritime torts is the Jones Act, 46 U.S.C.App. § 688.
>
> That legislation, which establishes a uniform federal law that state as well as federal courts must apply to the determination of employer liability to seamen, incorporates by reference "all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees." . . . More particularly, we have held that the Jones Act adopts the "uniformity of requirement" of the FELA, requiring state courts to apply a uniform federal law.

American Dredging, 510 U.S. at 455-56 (citations omitted).

Petitioners erroneously assert that § 688(b) does not achieve uniformity in the maritime context by ignoring the fact that § 688(b) applies only to the claims of foreign offshore oil workers who have a remedy in their country of origin or the country of injury. Petitioners' Brief at 15-16. By its clear terms, § 688(b) provides a uniform result to claims by foreign seamen injured in another country's territorial waters while engaged in oil or other energy production where a foreign remedy is available to that foreign seaman. The United States Fifth Circuit Court of Appeals recognized in *Vaz Borralho v. Keydril Co.*, 710 F.2d 207 (5th Cir. 1983) (*Vaz Borralho II*), that § 688(b) is "an attempt to establish a uniform approach to considering suits brought by foreign workers injured over the Outer Continental Shelf of a foreign nation." *Id.* at 210. Applicant's argument in this respect is completely without merit and ignores both the language of the statute and the legislative history surrounding the enactment of § 688(b) as discussed *infra*.

Nor is the decision of the trial court and the fourth circuit in conflict with *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996). In *Calhoun*, the Court applied a state wrongful death statute to a maritime tort claim where Congress **had not** prescribed any remedy for the wrongful death of non-seafarers in territorial waters. The Court held that the judicially-created maritime wrongful death remedy of *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1972), did not preempt application of state wrongful death statutes to accidents involving non-seamen in territorial waters. *Calhoun* is factually distinguishable in that the Mexican National Petitioners are seamen who were allegedly injured in the sinking of their vessel

on the high seas. Furthermore, in *Calhoun* there was no applicable statutory impediment to the application of state law since neither the Jones Act nor the Death On The High Seas Act, 46 App. U.S.C. § 761, applied.

Here the decision of the trial court and the fourth circuit is both consistent with and mandated by the recognition of Congress's role in crafting uniform rules relating to maritime matters. As recognized by the Court in *Calhoun*, "[w]hen Congress has prescribed a comprehensive tort recovery regime to be uniformly applied, there is, we have generally recognized, no cause for enlargement of the damages statutorily provided." *Id.* at 215. The result in *Calhoun* obtained precisely because the deceased was a non-seafarer injured in the territorial waters of Puerto Rico and was within a class of persons for which Congress had **not** prescribed a comprehensive "tort recovery regime." Here, through § 688(b) of the Jones Act, Congress has expressly provided a comprehensive tort recovery regime for seamen and those provisions must be uniformly applied, as recognized by the Louisiana lower courts.

Indeed, as stated by this Court in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990):

> [w]e no longer live in an era where seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to those legislative enactments for policy guidance. We may supplement these statutory remedies

> where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit [the Court's] actions.

Miles, 498 U.S. at 27. Thus, as Congress has spoken on this matter by way of the 1982 amendments to the Jones Act, that legislation controls.

More recently, the United States Court of Appeals for the Eleventh Circuit distinguished *Calhoun* in concluding that federal maritime law preempted Alabama law with respect to wrongful death claims which arose after a train derailed when a vessel's tow struck the railroad bridge support in state territorial waters. *In re Amtrak "Sunset Limited" Train Crash*, 121 F.3d 1421 (11th Cir. 1997), *cert. denied sub nom.*, ___ U.S. ___, 118 S.Ct. 1041 (1998). The Eleventh Circuit's analysis of *Yamaha* in the context of preemption is decisive:

> Thus, it is evident in *Yamaha* that the Court, while intent on protecting the state interests that were present in that particular case (a product liability action resulting from a recreational boating accident in territorial waters), was not concerned with overruling bedrock admiralty principles recognized in *Southern Pacific Company v. Jensen*, 244 U.S. 205, 215, 37 S.Ct. 524, 529, 61 L.Ed. 1086 (1917), where the Court held that state law must yield if it "works material prejudice to the characteristic features of the general maritime law or interferes with the

> proper harmony and uniformity of that law in its international and interstate relations." Indeed, since the birth of the *Jensen* doctrine in the early part of this century, the goals of uniformity and harmony in admiralty have survived to the present. *Yamaha*, by emphasizing these principles yet again, has affirmed their continuing vitality.

121 F.3d at 1424-25. As demonstrated by the legislative history giving rise to the enactment of § 688(b), Congress sought uniformity with respect to the treatment of the claims of foreign offshore oil workers in courts of the United States. Thus, there is no merit to Petitioners' contention that § 688(b) represents a procedural rule which state courts adjudicating maritime matters are free to ignore.

II. The Jones Act – Section 688(b)

In 1920 Congress enacted the Jones Act and created a cause of action for negligence against an employer in favor of a seaman injured in the course of his employment. 46 App. U.S.C. § 688. In 1982, Congress amended the Jones Act and removed that cause of action, as well as any remedy under "any other maritime law of the United States," from foreign offshore oil workers who had an available remedy either in their country of origin or the country where their injury occurred. 46 App. U.S.C. § 688(b). While Petitioners acknowledge that § 688(b) applies and excludes their Jones Act and general maritime law claims, they nevertheless take the inconsistent position that § 688(b) does not preclude an action under Louisiana law or Mexican law, which they may only

assert through the saving to suitors clause of 28 U.S.C. § 1333(1).[2]

Essentially, Petitioners argue that § 688(b) is no more than a "procedural" choice of law or *forum non conveniens* provision not binding upon a Louisiana state court under the authority of *American Dredging Co. v. Miller*, 510 U.S. 443 (1994). The fallacy of this argument is demonstrated by its logical extension: If § 688(b) is procedural in nature and not applicable in a Louisiana state court, then the Mexican Nationals would be entitled to assert Jones Act and general maritime law claims in the Louisiana action. This result could never be sanctioned for it violates not only the provisions of § 688(b) but also the Supremacy Clause of the United States Constitution. U. S. Const. art. VI, cl. 2.[3] Under any fair reading of the Jones Act, the

---

[2] Louisiana substantive law would not even apply to the claims asserted by Petitioners. None of the Petitioners are Louisiana citizens and none of the events occurred in Louisiana. *See generally* La. Civ. Code Ann. arts. 3542-3547 (West 1999).

[3] As Petitioners concede that they have no Jones Act or general maritime law claim, they must acknowledge the fallacy of their argument. Accordingly, it is immaterial whether § 688(b) is considered procedural or substantive; it is no less binding on a Louisiana state court. Moreover, Louisiana courts view substantive legislation as statutes that either establish new rules, rights and duties or change existing ones. A procedural law is viewed as one that prescribes a method of enforcing a substantive right and relates only to the forum of the proceeding or the operation of the law. *Milstead v. Diamond M Offshore, Inc.*, 676 So.2d 89 (La. 1996); *Rousselle v. Plaquemines Parish School Board*, 633 So.2d 1235 (La. 1994); *Segura v. Frank*, 630 So.2d 714 (La. 1994). Obviously, § 688(b) is substantive in nature in that it takes away from foreign offshore oil workers any remedy under the Jones Act or the general maritime law.

conclusion is inescapable that § 688(b) is substantive in nature as defined by this Court's jurisprudence. *See, e.g., Hughes Aircraft Co. v. United States*, 520 U.S. 939 (1997) (recognizing that statute expanding remedies and granting new causes of action involved substantive rights of the parties and could not be applied retroactively); *Lindh v. Murphy*, 521 U.S. 320 (1997) (amendments to *habeas corpus* deemed substantive because the amendments "affect[ed] substantive entitlement to relief"); *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994) (Scalia, J., concurring). In enacting the 1982 Amendments to the Jones Act, Congress recognized that § 688 is substantive in nature by only allowing for prospective application of newly-enacted § 688(b). Finally, even the authority cited by Petitioners in their brief concedes that § 688(b) is substantive in nature and binds the state court. David W. Robertson, *Admiralty and Maritime Litigation in State Court*, 55 La.L.Rev. 685, 729 and n.259 (1995).

Section 688(b) precludes any action to foreign offshore oil workers in any American court whether under Louisiana law or Mexican law as intended by Congress in enacting § 688(b). As the legislative history proves, the purpose of the 1982 Amendment was to establish a uniform rule to protect American companies in the offshore oil and mineral industry from the competitive disadvantage that arises when foreign workers are allowed to

---

Certainly § 688(b) cannot be considered substantive with respect to the Jones Act and general maritime law claims but be viewed as procedural for purposes of state or foreign law claims.

forego the remedy available in their own country to pursue a claim in an American court in the hope of a larger recovery.[4] That purpose would be totally frustrated if a maritime tort claim barred by virtue of § 688(b) could be heard in any American court under the guise of state or foreign law.

As consistently emphasized by this Court, Congress's intent and the reasons which prompted Congress to enact the law are considerations in interpreting a statute. *First National Bank v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966) ("It is not for us to so construe the Acts as to frustrate this clear-cut purpose so forcefully expressed by both friend and foe of the legislation at the time of its adoption."). The House Committee Report on § 688(b) states that its purpose is to establish **uniform rules** that would prevent the maintenance "in the courts of the U.S." of actions by foreign offshore seamen in the circumstances described in that section. *See* H.R. Rep. No. 863, 97th Cong., 2d Sess., at 2 (1982). In describing the purpose of this legislation, the House Committee specifically noted:

> The legislation addresses the situation where a foreign worker, injured in the territorial waters or over the continental shelf of a nation other than the United States, seeks legal relief in the courts of the U.S. The *legislation provides that a suit may not be maintained* in that situation under U.S. law unless the injured party has no remedy

---

[4] *See* H.R. Rep. No. 863, 97th Cong., 2d Sess., at 3 (1982) ("Lawsuits brought by foreign offshore workers not only substantially increase the insurance and litigation costs of U.S. companies but may also increase court congestion.").

> in either his country of citizenship or nationality or the country exercising jurisdiction over the waters where the incident giving rise to the injury occurred.

H. R. Rep. No. 863, 97th Cong., 2d Sess., at 2 (1982) (emphasis added).

A review of the comments in Congress during the debates on § 688(b) establishes beyond question that "courts of the U.S." includes both state and federal courts. The legislative history establishes that foreign seamen were not intended to have any remedy, whether under federal law, state law, or foreign law, **in any American court** where a remedy was available in either their country or in the country having jurisdiction over the area where the accident occurred.[5]

---

[5] The full intent of § 688(b) was described in detail by Congresswoman Boggs:

> I believe this legislation is important to the economic health of our offshore service industry. As many of my colleagues know, a number of offshore service companies are based in the New Orleans area. These companies operate throughout the world, in the Middle East, off the coasts of Nigeria, Mexico, and Indonesia, in Prudhoe Bay, Alaska, and in the North Sea, just to name some of the major areas.
>
> In recent years some of these companies have been plagued by numerous lawsuits filed by foreign offshore oil and gas workers for injuries occurring over the Continental Shelf of foreign nations for which remedies are available overseas. This has proved to be very costly to these companies and to the world energy effort.
>
> U.S. offshore service companies' costs are in the form of defending expensive lawsuits tried

In precluding foreign offshore oil workers from suing in **American** courts, which by its terms would include both federal and state courts, there can be no doubt that Congress intended § 688(b) to exclude not just Jones Act and general maritime law claims, but any claim in any American court. Nor can there be any doubt that Congress intended that foreign offshore plaintiffs must first pursue the available remedy in their own country and that the American court system would serve as a court of last resort **only** where plaintiffs have no remedy in their own country.[6]

> thousands of miles away from the place of the incident. *These cases should not be tried in American courts;* rather, they should be tried under the laws of the jurisdiction in which the incident occurred. This situation results in additional insurance costs since the U.S. companies also are subject to the work-related compensation scheme where they work – that is, in the foreign country – and the costs of settling or even losing lawsuits brought in U.S. courts by foreign nationals.
>
> Foreign companies operating in competition to our own industry are not subject to these same costs. Because they do not bear this same burden they are at a competitive advantage over U.S. industry. Unfortunately, these additional costs are pricing our companies out of the market when they bid for work overseas against foreign-owned businesses.

128 Cong. Rec. 25,426 (1982). Congresswoman Boggs believed that the bill was fair because it preserved an American remedy for American workers while foreign workers would have recourse to their own national courts or compensation systems.

[6] Advocating enactment of § 688(b), Congressman Breaux explained:

The report of the House Committee which considered the proposed amendment of § 688(b) was consistent with the views expressed by the Louisiana delegation. In asking for a yes vote on the Jones Act amendment, Congressman Tauzin pleaded:

> H.R. 4863 would make the clarification by establishing that the foreign employee may not obtain a remedy under U.S. laws for an injury sustained in a work-related incident which occurred overseas for which a remedy is available overseas. H.R. 4863 would not affect U.S. maritime laws as they may be applied to any U.S. worker, any seaman on a blue-water vessel, or anyone working over the U.S. Continental Shelf.

128 Cong. Rec. 25,427 (1982). Additional legislative history demonstrates Congress's clear intent not to allow this type of action to proceed in any court in this country. 128 Cong. Rec. 25,422-29 (1982).

That the remedy provided in the claimant's home country might not be as lucrative as tort recoveries in the

---

> . . . It is quite simple. We are saying to foreign seamen who work for U.S. companies that if they are injured, that if they have a remedy in their own country, if they have a court remedy in their own country for the injury that they have received, that they have to first pursue that remedy in their own country. That is not a novel, unusual approach. It makes sense. It is logical. We are not telling them that they cannot have access to U.S. courts. They can have access to our courts if they have no remedy available in their own country.

128 Cong. Rec. 25,423 (1982).

United States was of no significance to Congress. Congress did not view this result as unfair because it afforded foreign offshore workers who allegedly sustained injury from an accident in foreign waters, such as the Mexican Nationals, the same remedies as their fellow countrymen:

> The legislation will place the offshore non-maritime worker in the same legal position as his shore side counterpart. There will be no unfairness to the offshore worker, since he can still bring suit in the place where he has chosen to live or work.[7]

H.R. Rep. No. 863, 97th Cong., 2d Sess., at 4 (1982).

---

[7] The comments of Senator Long during the senate debate concerning the enactment of § 688(b) demonstrate that the Senate Committee was of the same view:

> The United States should not continue to export its remedies for foreign workers' work-related injury claims which arose in foreign waters. Since no other country allows its judicial system to be used by foreign citizens for incidents occurring within the jurisdiction of foreign nations, U.S. offshore service companies and their foreign subsidiaries are at a competitive disadvantage with their many foreign competitors.
>
> A reasonable solution is to clarify U.S. maritime tort laws to provide that a foreign worker engaged in mineral extraction activities in waters over the continental shelf of a foreign nation **may not seek a remedy for his work-related injury in U.S. courts** if he has a remedy in his home country, or in the country with jurisdiction over the accident site, if different. Should there be no remedy overseas, the foreign worker would then, and only then, be able to adjudicate his claims in U.S. courts.

128 Cong. Rec. 29,924 (1982). To level the playing field for U.S. offshore service companies and their foreign subsidiaries,

In establishing a uniform rule mandating dismissal of the claims of foreign offshore workers, Congress was prompted by its desire to clarify and codify the existing jurisprudence concerning choice of law and *forum non conveniens*. An understanding of the existing case law through 1982 with respect to choice of law and *forum non conveniens* concepts, as applied to suits brought on behalf of foreign offshore workers, is instructive as to the full extent to which § 688(b) is to be applied. To be certain, choice of law was then relevant only to *forum non conveniens*. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 359 (1959); *Nicol v. Gulf Fleet Supply Vessels, Inc.*, 743 F.2d 289 (5th Cir. 1984); *Sosa v. M/V LAGO IZABAL*, 736 F.2d 1028, 1031 (5th Cir. 1984). Indeed, a choice of law analysis was considered as the first prong of a *forum non conveniens* test. *Ali v. The Offshore Co.*, 753 F.2d 1327 (5th Cir. 1985).

In a line of cases beginning with *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978), and culminating in *Chiazor v. Transworld Drilling Company, Ltd.*, 648 F.2d 1015 (5th Cir. 1981), courts applying the *Lauritzen*[8] and *Rhoditis*[9] choice of law factors in the context of offshore exploration and development vessels located in foreign waters placed greater emphasis on

---

Senator Long supported enactment of § 688(b) as designed to exclude all claims of foreign offshore workers from American courts. The view held by the Louisiana delegation was shared by the majority of members of Congress who addressed the issue. *See* 128 Cong. Rec. 25,422-29 (1982).

[8] *Lauritzen v. Larsen*, 345 U.S. 571 (1953).

[9] *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970).

the allegiance and domicile of the injured worker and on the place of contract rather than on the ultimate ownership of the vessel through a subsidiary of a U.S. multinational corporation. The rationale of the *Chiazor* line of cases was based upon the factual distinction between traditional merchant vessels which sail to varying locations throughout the world as compared with vessels engaged in offshore oil and gas operations which are usually confined to one geographic region. In the *Chiazor* line of cases, the courts refused to apply U.S. law, including the Jones Act, and dismissed the claims of foreign offshore workers. *Chiazor v. Transworld Drilling Co., Ltd.*, 648 F.2d 1015 (5th Cir. 1981); *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978); *Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3d Cir. 1980); *Phillips v. Amoco Trinidad Oil Co.*, 632 F.2d 82 (9th Cir. 1980), *cert. denied sub nom.*, 451 U.S. 920 (1981); *Dos Santos v. Reading & Bates Drilling Co.*, 495 F. Supp. 843 (E.D.La. 1980). It cannot be disputed that Congress had the *Chiazor* line of cases in mind when it passed the amendment to the Jones Act in 1982. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). ("We assume that Congress is aware of existing law when it passes legislation.").

In *Vaz Borralho v. Keydril Co.*, 696 F.2d 379 (5th Cir. 1983) (*Vaz Borralho I*), the Fifth Circuit approved the *forum non conveniens* dismissal of a wrongful death claim by survivors of a Brazilian seaman killed while working on a submersible drilling rig off the coast of Brazil; however, the court reversed and remanded for the fashioning of an appropriate conditional dismissal. In denying a petition for rehearing, the court reviewed the 1982 amendment of the Jones Act and concluded that Congress was well

aware of the existing case law when enacting § 688(b). *Vaz Borralho II*, 710 F.2d at 210-212. In fact, the Fifth Circuit observed that the language of the amendment and its legislative history were consistent with the rationale of *Chiazor*, which resulted in the dismissal of the foreign offshore workers' claims. *Id.*

The Fifth Circuit also observed that the 1982 amendment was broader in scope than the rationale of *Chiazor* and was to be uniformly applied on an industry wide basis. *Vaz Borralho II*, 710 F.2d at 209. In this respect, the court focused on the comments of Congressman Biaggi, the bill's sponsor, who stated:

> Most court decisions [*Chiazor*, et al.] have held that a foreign offshore worker injured on a foreign Continental Shelf should not bring his action in a U.S. court – unless he lacks a remedy in the host nation or his home nation. H. R. 4863 will codify this judicial precedent.

Id. at 211 (quoting 128 Cong. Rec. 25,422 (1982)). The court was further impressed with the comments of Congressman Snyder who noted that § 688(b) was "an attempt to establish a uniform approach to considering suits brought by foreign workers injured over the Outer Continental Shelf of a foreign nation." *Id.* (quoting 128 Cong. Rec. 25,423 (1982)).

Even without the ample evidence of legislative intent behind § 688(b), Petitioners' contention that § 688(b) permits dismissal of only the Jones Act and general maritime law claims defies the rules of statutory construction. Petitioners' argument focuses solely on the reference to the Jones Act and any other maritime law of the United States in § 688(b)(1), and fails to address the qualifying

language of § 688(b)(2) concerning the availability to the foreign offshore worker of a remedy in his home country or the country of injury. A basic rubric of statutory construction is that the statute's provisions must be read in *pari materia* so as not to achieve absurd results. *Robinson v. Shell Oil Co.*, 117 S.Ct. 843, 846 (1997) (statute must be read as a whole). When read as a whole, the statute clearly prohibits a foreign offshore worker from pursuing a remedy in American courts, whether federal or state court, when he has a remedy in his home country or the country of injury.[10] A contrary reading allowing the foreign seamen a right of action under state and/or foreign law would render § 688(b)(2)'s provision meaningless, for the availability of the foreign seaman's remedy would be irrelevant.

Additionally, Petitioners have no substantive right of action because of § 688(b). There can be no doubt that any tort claim by the Mexican Nationals as a result of the sinking of a vessel on navigable waters arises under and

---

[10] *See, e.g., Jackson v. S.P. Leasing Corp.*, 774 S.W. 2d 673 (Tex. Ct. App. 1989); *Lawrenson v. Global Marine, Inc.*, 869 S.W. 2d 519 (Tex. Ct. App. 1993). As noted by Congressman Snyder:

> . . . this bill would require a foreign seaman injured while engaged in offshore drilling activity in waters of a foreign country to first pursue whatever legal remedy is available to him through the country in whose jurisdiction he was injured or in the country in which he is a citizen or resident before he comes to the U.S. judicial system. If there is a remedy to him through a foreign jurisdiction, then he is precluded from instituting an action in the U.S. courts.

128 Cong. Rec. 25,423 (1982).

is governed by substantive admiralty and general maritime law. *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995). A Jones Act seaman may assert a claim for damages in either federal or state court pursuant to the Jones Act. *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 63 (1943). Otherwise, a plaintiff, whose claims are cognizable in admiralty, may choose to bring suit in state court under the authority of the "saving to suitors clause" of 28 U.S.C. § 1333(1), the jurisdictional source of the admiralty and general maritime law of the United States. *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372 (1918). Generally, state courts exercising concurrent maritime jurisdiction are bound to apply substantive federal maritime statutory law. *Milstead v. Diamond M Offshore, Inc.*, 676 So.2d 89 (La. 1996).

As § 688(b) applies to the facts of this case, the Mexican Nationals may not maintain any action under the Jones Act "or under any other maritime law of the United States . . . for damages. . . . " 46 App. U.S.C. § 688(b). Since the "maritime law of the United States" encompasses the saving to suitors clause of 28 U.S.C. § 1333(1), *Bonnette v. Shell Offshore, Inc.*, 838 F. Supp. 1175, 1180 (S.D. Tex. 1993); Thomas J. Schoenbaum, ADMIRALTY & MARITIME LAW § 3-13, at 116-17 (1987), and since the Mexican Nationals are denied the right to invoke the saving to suitors clause by § 688(b), the Mexican Nationals have no right to maintain this action under Louisiana law or any other (Mexican) law in a Louisiana state court. In the final analysis, it is a common law

remedy (when not contrary to federal statutory or maritime law) which is saved, not a remedy in a common law court. *The Moses Taylor*, 71 U.S. 411, 397 (1866); *Wunderlich v. Netherlands Ins. Co.*, 125 F. Supp. 877 (S.D.N.Y. 1954); *Davis v. Matson Navigation Co.*, 143 F. Supp. 537 (N.D. Cal. 1956).

Even assuming that the saving to suitors clause is not barred by § 688(b), the criteria to determine whether a particular remedy is "saved" to an admiralty litigant in a non-admiralty, state court action are as follows: (1) the remedy must be one to which the litigant would otherwise be entitled under the law of the forum; and (2) the remedy must not alter or conflict with the maritime or admiralty law which establishes the substantive rights of the parties. *Pittman v. Port Allen Marine Services*, 794 F. Supp. 593, 599 (M.D. La. 1992). The state courts' ability to entertain *in personam* maritime causes of action is constrained by what is known as the "reverse-*Erie*" doctrine, which requires the substantive remedies offered by the state to **conform** to governing federal maritime standards. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222-23 (1986). In this context, application of Louisiana law or Mexican law would not supplement general maritime law but would directly contradict that body of law as defined by Congress in § 688(b). As directed by the Louisiana Supreme Court, a Louisiana state court should respect Louisiana law **unless** there is some federal impediment to application of that law **contained in federal legislation** or a clearly applicable rule in the general maritime law. *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634, 638 (La. 1992). Here, the impediment to the Mexican National Petitioners' right of action is contained

in the federal legislation of § 688(b) which excludes U.S. remedies to foreign offshore workers.

III. Maritime Preemption

Furthermore, the appropriate interplay between state law and federal law in maritime matters requires that the trial court's dismissal of the Mexican Nationals' state law and Mexican law claims, affirmed by the appellate court, be upheld. State law has always been inapplicable "if it contravenes the central purpose expressed by an Act of Congress [here, § 688(b)], or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917); *see also American Dredging Co. v. Miller*, 510 U.S. 443 (1994).

State law claims are preempted and not available to the Mexican Nationals where Congress has, by amending the Jones Act to exclude suits by foreign offshore oil workers, specifically proscribed any remedy. *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207; *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964). While state law may supplement federal maritime law where the maritime law is silent or where a local matter is at issue, *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973), here federal maritime law is not silent. Section 688(b) speaks loudly to this issue and it cannot be said that the sinking of the DLB-269 in Mexican waters or the resulting claims of Mexican Nationals may be considered a "local matter" to a Louisiana court.

Clearly, the Jones Act legislation contained in § 688(b) establishes a uniform federal rule which is binding upon state courts through the Supremacy Clause of the U.S. Constitution. U.S. Const. art. VI, cl. 2; *American Dredging*, 510 U.S. at 455. As previously noted, a Louisiana state court may not apply Louisiana law where there is a federal impediment to application of state law by virtue of federal legislation such as § 688(b) of the Jones Act. *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634, 638 (La. 1992).[11]

---

[11] State courts in Texas have recognized the preemptive effect of § 688(b). *Jackson v. S.P. Leasing Corp.*, 774 S.W.2d 673, 678 (Tex. Ct. App. 1989); *Lawrenson v. Global Marine, Inc.*, 869 S.W.2d 519, 526 (Tex. Ct. App. 1993). In *Jackson*, the Texas appellate court affirmed dismissal of a personal injury claim of a foreign offshore worker injured aboard a vessel off the coast of Mexico. Finding that Jackson had a foreign remedy, the court affirmed dismissal of Jackson's Jones Act and Texas law claims. In denying Jackson's second motion for rehearing, the court specifically addressed the very issue raised herein by Petitioners:

> Here, federal law preempts state law because a conflict exists between the Texas Open Forum Act and the Jones Act. Whereas the Texas Open Forum Act appears to allow Jackson to litigate his claim in a Texas state court, 46 App. U.S.C. App. § 688(b) denies a Jones Act remedy and any other remedies under general maritime law to a foreign seaman in the offshore drilling industry when they are injured in another country's territorial waters, unless neither the country where the injury occurred nor the seaman's home country provides any remedy.

Jackson, 774 S.W.2d at 678.

Lawrenson involved the claim of a British offshore worker injured off the coast of Africa who asserted Jones Act and Texas

IV. Petitioners' Authorities Are Inapposite

Petitioners' Brief in support of the Petition for Writ of Certiorari is replete with authorities which are inapposite to the issue at hand. The authorities cited by Petitioners do not confront the issue of whether § 688(b) bars state or foreign law claims. Petitioners' reliance on *Camejo v. Ocean Drilling & Exploration Co.*, 838 F.2d 1374 (5th Cir. 1988), for the proposition that § 688(b) does not bar the foreign seaman's state law claims is misplaced. Specifically, the court in *Camejo* did not consider, nor was it presented, the issue of whether the 1982 amendments to the Jones Act contained in 46 App. U.S.C. § 688(b) operate to preclude a foreign seaman's state law claims. That the court proceeded to address the parties' arguments relative to *forum non conveniens* with respect to plaintiffs' Texas state law claims is of no moment and does not support Petitioners' assertion that § 688(b) does not bar their claims.

In a similar vein, the court in *Marriott v. Sedco Forex International Resources, Ltd.*, 827 F. Supp. 59 (D. Mass. 1993), did not "refuse" to reach the defendants' § 688(b) arguments. Rather, the issue under § 688(b) was not reached because the court ruled that the claims of the foreign seamen should be addressed under Indian substantive law. *Id.* at 67 n.10. Despite Petitioners' suggestion, nowhere in the *Marriott* opinion did the court

---

law claims. Finding that Lawrenson had a foreign remedy, the Texas appellate court affirmed dismissal of his Jones Act and Texas law claims specifically holding that Lawrenson's state and common law causes of action were preempted by § 688(b) of the Jones Act. *Lawrenson*, 869 S.W. 2d at 524.

recognize that § 688(b) "was only intended to preclude the Jones Act remedy and not foreign substantive law claims." Petitioners' Brief at 10. The court in *Marriott* was not presented the issue of whether state or foreign law claims could be brought in state court.

Petitioners' erroneous argument that the court in *Cuevas v. Reading & Bates Corp.*, 577 F. Supp. 462 (S.D. Tex. 1983), *aff'd*, 770 F.2d 1371 (5th Cir. 1985), "concluded that the sole intent of the statute [§ 688(b)] was to preclude the application of the maritime law of the United States to certain claims asserted by foreign nationals," (Petitioners' Brief at 10) cannot be supported by any language in the court's opinion. Petitioners' assertion is noticeably lacking any citation, and the opinion makes no conclusion regarding the "sole intent of the statute." Indeed, within the opinion, the court recognized that § 688(b) signifies an expression of the national interest of the United States in refusing claims by foreign seamen. *Id.* at 469.

Finally, Petitioners' assertion that "[t]here are numerous cases which thoroughly discuss and correctly recognize that a court (federal or state) which is vested with admiralty jurisdiction will, in appropriate circumstances, apply foreign substantive law to adjudicate a plaintiff's claim," Petitioners' Brief at 12, is fatally flawed and is, at best, irrelevant. That flaw is that none of the cited cases involve the application of § 688(b). Each of these cited cases involve American plaintiffs and/or accidents occurring in American navigable waters. *Klinghoffer v. S.N.C. ACHILLE LAURO*, 937 F.2d 44 (2d Cir. 1991), involved claims against foreign entities by an American plaintiff. *Id.* at 46-47. Similarly, *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159 (5th Cir. 1987), involved

the claims of an American seaman, *id.* at 1160; the same is true for *Neely v. Club Med Management Services, Inc.*, 63 F.3d 166, 170 (3d Cir. 1995). *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113 (5th Cir. 1995), involved claims by a United States citizen. *Id.* at 1120. Finally, *Sosa v. M/V LAGO IZABAL*, 736 F.2d 1028 (5th Cir. 1984), involved an accident occurring on the navigable waters of the United States. Thus, none of these cases deal with the claims of a foreign seaman or the application of 46 App. U.S.C. § 688(b). Respondents do not contest that there are situations where an American court, whether federal or state, will apply foreign substantive law in an action brought by an American plaintiff. Nothing in § 688(b) bars an American seaman from bringing a claim governed by foreign substantive law in an American court. Therefore, whether the court in these cases applied foreign substantive law to adjudicate a plaintiff's claim is irrelevant, as none of these plaintiffs were foreign seamen governed by § 688(b).

CONCLUSION

The Petitioners' remedies under Mexican law must be pursued in Mexico, the country of Petitioners' origin and the location of the accident giving rise to their claim, as provided by § 688(b). By denying the Mexican Nationals a right to bring an action under Mexican law through Louisiana law, both the trial court and appellate court gave effect to the purpose for which § 688 was enacted. The trial judge and the appellate court astutely recognized that state law may not stand as an obstacle to the accomplishment and execution of the full purposes and

objectives of an Act of Congress. *Boggs v. Boggs*, 520 U.S. 833 (1997) (citing *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 73 (1992)).

Petitioners are not aided by *American Dredging Co. v. Miller*, 510 U.S. 443 (1994), for that decision did not involve a foreign seaman, much less a foreign offshore worker covered by § 688(b) and did not involve a conflict with a federal substantive provision of the Jones Act. The Court's decision in *American Dredging* actually supports a uniform and predictable application of § 688(b) to foreign offshore oil workers which would otherwise be unobtainable due to a court's discretion in analyzing a variety of *forum non conveniens* factors. Nor is there any merit to Petitioners' magical contention that the Mexican Nationals are somehow transformed by the wand of § 688(b) into non-seafarers who may now pursue state law remedies as allowed by *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996). This contention defies logic, reason and reality; *Calhoun* merely allowed a state law death recovery to a non-seafarer killed in territorial waters where there was no federal statutory impediment. The remainder of Petitioners' authorities neither involve the application of § 688(b) nor address the issue of whether § 688(b) is a bar to state and foreign law claims of foreign offshore workers in the judicial system of the United States.

McDermott Respondents submit that the clear legislative intent which led to the amendment of the Jones Act through § 688(b) is that foreign offshore oil workers pursue their available foreign remedies in foreign courts; the language of § 688(b), when construed in its entirety, mandates that foreign offshore workers be denied access to

any American court whether damages are sought under the Jones Act, U.S. maritime law, state law or foreign law. Construing the statute in this manner is entirely consistent with the preemptive deference afforded Jones Act legislation. Petitioners' Writ of Certiorari is without merit and should be denied.

Respectfully submitted,

EDWARD J. KOEHL, JR., #7805
JONES, WALKER, WAECHTER, POITEVENT,
CARRÈRE & DENÈGRE, L.L.P.
201 St. Charles Avenue, 47th Floor
New Orleans, Louisiana 70170-5100
Telephone: (504) 582-8176
Attorneys for Respondents